IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

TUESDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND SEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

WRIT PETITION No.26802 of 2007

Between:

Smt.G. Lakshmi Devamma … Petitioner

Versus

The Joint Collector,
Kurnool,
Kurnool district & Anr. … Respondents

Counsel for the Petitioner: Sri K V RAGHUVEER (5135)

Counsel for the Respondents: GOVT.PLEADER FOR CIVIL SUPPLIES

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION No.26802 of 2007

O R D E R :

Heard Sri KV Raghuveer, the learned counsel representing the writ petitioner and the learned Assistant Govt.Pleader for Civil Supplies.

2. On 14-12-2007 the learned Assistant Govt.Pleader had taken notice and requested time to get instructions. The instructions received by the learned Asst.Govt.Pleader for Civil Supplies of this Court are placed before this Court.

3. Sri K V Raghuveer, the learned counsel representing the writ petitioner had taken this court through the contents of the affidavit filed in support of the writ petition and also the nature of the order made on 05-12-2007 by the first respondent. The counsel also pointed out that without giving any opportunity whatsoever, the said order was made and the same is not in accordance with the A.P. State Public Distribution System Control Order, 2001 {hereinafter referred to in short as the order for the purpose of convenience}.

4. The learned Asst.Govt.Pleader for Civil Supplies having placed the instructions before this court would maintain that in-as-much-as the first respondent was satisfied it is not a case for interference, the

appeal no doubt was rejected at the stage of admission.

5. The writ petition is filed for a writ of mandamus, declaring the action of the first respondent in dismissing the appeal, without giving opportunity to the petitioner vide Proceedings RC.DSO/CS3/456/2007 dated 05-2-2007 as illegal, arbitrary and violative of the conditions of the AP State Public Distribution System Control Order, 2001 and consequently to set aside the same and to pass such other suitable orders as this Court may deems fit and proper in the circumstances of the case.

6. The impugned order dated 05-12-2007 reads as hereunder:

IN THE COURT OF THE DISTRICT COLLECTOR : KURNOOL

Present: Sri KRBHN CHAKRAVARTHI, M.Sc.,

RC.DSO/5CS3/456/2007 Dated: 05-12-2007.

Sub: CS – Kurnool district – Appeals – Kurnool city Smt.G.Lakshmi Devamma shop no.148 committed certain irregularities – Authorization suspended pending enquiry – appeal filed – Orders – Issued.

Ref: 1) RDO Procdgs.No.Rc.b1868 dated 13-11-2007.
2) Appeal filed by Smt.G.Lakshmidevamma shop no.148 Kurnool city, dated 17-11-2007.

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ORDER :

Through the reference 2nd read above, Smt.G.Lakshmidevamma, FP shop dealer, Kurnool city has filed an appeal under clause 20 (1) (i) of APSPDS Control Order 2001 against the orders of the Revenue Divisional Officer, Kurnool in the reference 1st read above, requesting to grant stay of the operation of the orders of the Revenue Divisional Officer, Kurnooll and to restore the authorization.

BRIEF FACTS OF THE CASE :

The Asst.Supply Officer, Kurnool has reported that as per the instructions of the Joint Collector he along with the Dy.Collector (UT) have inspected the FP shop no.148, Kurnool city on 1-11-2007 that the FP shop dealer Smt.G.Lakshmidevama was present on physical verification they found excess stock of 1.62 quintals of wheat, and she has not produced sales register for October 2007, they have verified the rice and kerosene coupons and found tallied with the sales, the authorization of the dealer and renewed and valid upto 31-3-2008.

On physical verification of the stock 1.62 quintals of wheat found excess that she is not maintaining sales register.

Basing on the report of the Asst.Supply Officer, Kurnool, the Revenue Divisional Officer, Kurnool, suspended the authorization of the dealer vide Procdgs.No.RC.B/1868/2007 dated 13-11-2007.

Aggrieved by the above orders of the Revenue Divisional Officer, Kurnool the dealer has filed an appeal petition before the Joint Collector for granting stay and to restore the authorization.

After examine the orders of Revenue Divisional Officer and appeal filed by the FP shop dealer. The grounds for appeal are not valid, when there is a clear variation of wheat, the argument that accounts are not properly verified is not correct.

There are no grounds to interfere with the orders passed by the Revenue Divisional Officer, Kurnool, dated 13-11-207.

Hence appeal is rejected at admission stage.

Sd/- KRBHN CHAKRAVARTHI
Joint Collector,
Kurnool

//t.c.f.b.o.//

Sd/-
Asst.Supply Officer

7. In the instructions placed before this Court, it is stated that the Revenue Divisional Officer, Kurnool had suspended the authorization of the dealer under pending enquiry. One more action is pending with

the Revenue Divisional Officer, Kurnool is that either to restore the authorization or cancel the authorization after conducting the enquiry.

Hence, the request of the writ petitioner for grant of stay is rejected and the appeal is dismissed at the admission stage.

This is submitted for favour of kind information.

8. The petitioner has been functioning as fair price shop dealer for the past several years without any complaint from the card holders or from the appointing authority at any point of time. It is also averred that the second respondent by his Proceedings Rc.B-1868/2007 dated 13-11-2007 suspended the authorization of the petitioner, pending enquiry based on the report submitted by the Assistant Supply Officer, Kurnool vide reference RC.No.ASO/106/07 dated 01-11-2007. The said report was not furnished to the petitioner along with the proceedings issued to the petitioner. The second respondent stated in his prior proceedings the report submitted by the Asst.Supply Officer stated that there is excess quantity of stock of 1.62 quintals of wheat and sale register was not maintained. The said order made by the Revenue Divisional Officer, Kurnool, the second respondent herein, reads as hereunder:

PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER : KURNOOL

PRESENT: Smt. S. SASI DEVI, M.A.,

Rc.B 1868/2007 Dated:13-11-2007.

Sub: Civil Supplies – Smt.G.Lakshmidevamma, FP shop dealer Shop no.148, Kurnool city – committed certain Irregularities – authorization suspended pending enquiry - orders – issued.

Ref: Rc.No.ASO/106/07, dated 01-11-2007 of the Assistant Supply Officer, Kurnool.

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O R D E R :

The Asst.Supply Officer, Kurnool vide reference read above, has reported that as per the instructions of the Joint Collector, Kurnool, he along with the Dy.Collector (UT) have inspected the FP shop no.148, Kurnool city on 01-11-2007 that the FP shop dealer, Smt.Lakshmi Devamma was present that on physical verification they found excess stock of 1.62 quintals of wheat, that she has not produced sales register for October 2007, that they have verified the rice and kerosene coupons and found tallied with the sales, that the authrisation is renewed valid upto 31-3-2008 and finally recommended for taking necessary action against the FP shop dealer.

On physical verification of the stock, 1.62 quintals of wheat found excess and that she is not maintaining sales register.

In view of the above the authorization of Smt.G.Lakshmidevamma, FP shop dealer, shop no.148, kurnool city, Joharapuram village is hereby suspended pending enquiry into the case.

Sri G.Chandrasekhar, FP shop dealer, shop no.124, Kurnool city, is kept incharge of the FP shop no.148, Kurnool city. The Asst.Supply Officer, Kurnool is directed to take necessary action in allotting the essential commodities relating to the FP shop no./148, Kurnool city to Sri G.Chandrasekhar, FP shop dealer, shop no.124, Kurnool city.

(An appeal lies before the Joint Collector, Kurnool, within 30 (thirty) days from the date of receipt of this order).

Sd/- S.SASIDEVI
REVENUE DIVISIONAL OFFICER
KURNOOL

//t.c.f.b.o.//
Sd/-
Administrative Officer.

9. It is also stated that in the impugned proceedings, it was stated that on verification of rice and kerosene coupons the sales were found tallied but the second respondent only to make a ground for suspension of the petitioner's fair price shop had made a false allegation that sales register is not maintained. After the introduction of the coupon system, the commodities were supplied by collecting the coupons from the cardholders and their names and numbers are mentioned behind the coupons along with the quantity supplied to them. This practice is being done from the day of introduction of coupons and the respondents are also aware of this practice. The coupons are directly supplied to the cardholder and by giving the coupons to them, the commodities are being taken by them.

10. It is also averred that the impugned proceedings itself shows that the supply done by the petitioner are tallied and there is no allegation of black-marketing done by the petitioner and only at the instance of some local political leaders, the second respondent passed an order suspending her authorization. There is no complaint lodged by any of the cardholder and at the instruction of first respondent, for the reasons best known to them, the suspension order had been passed. On the day of inspection, the officials did not find any variation in the stocks, hence they have not recorded any

panchanama and they have not seized the stock, which they have alleged, is excess. The 1.62quintal of wheat is the balance that is available in the shop after the distribution to the cardholders and the respondents have made a ground stating that there is excess stock of 1.62 quintals of wheat.

11. Further aggrieved by the order made by the second respondent, the writ petitioner filed WP.No.24815 of 2007, as the first respondent did not pass any order in the appeal preferred by the petitioner.

12. The said WP.No.24815 of 2007 was disposed of by this court on 23-11-2007, wherein this court recorded that “It is stated that an appeal had been preferred and the same is pending before the first respondent. It is also stated that no interim orders had been made by the first respondent in this regard.” Further it is brought to the notice of this court by the Asst.Govt.Pleader that alternative arrangement had already been made. In the light of the same, ***Statusquo*** obtaining as on today to be maintained till the disposal of appeal. Let the first respondent dispose of the appeal within a period of four weeks from the date of receipt of a copy of this order.

With the said observation, the writ petition is disposed of at the stage of admission. No costs.

13. Further it is stated that the first respondent by his Proceedings

RC.DSO/CS3/456/2007 dated 05-12-2007 without giving any opportunity of hearing, dismissed the appeal along with stay application at the stage of admission. Clause 17 mandates that before disposing of any appeal, the appellate authority shall give opportunity to the parties before passing an order. Further it is stated that till today, the incharge who was appointed for the fair price shop of the writ petitioner, did not come forward to supply the stocks to the card holders, as he had expressed his inability to supply the essential commodities, as his financial capacity is bad. Till today no body had lifted the stocks to supply essential commodities to the cardholders of the writ petitioner shop and the writ petitioner may be permitted to lift the stocks, pending enquiry before the second respondent.

14. Certain other further averments were made relating to the political pressure and the other aspects as well in the affidavit filed in support of the writ petition.

15. Though Clause 17 of the AP State Public Distribution System Control Order, 2001 had been referred to in the affidavit filed in support of the writ petition, it is brought to the notice of this court that Clause 20 of the AP State Public Distribution System Control Order, 2001 deals with appeals, thus:

(1) Any person aggrieved by any order passed by the Appointing Authority under clause (5) may, within thirty days from the date of receipt by him/her of such order, appeal against such order, where it is passed by.

i) The RDO or the Sub Collector or the DSO (city) having jurisdiction over the area in respect of the Visakhapatnam city to the Joint Collector in the district.

ii) The Chief Rationing Officer in Hyderabad district.

In disposing of any appeal under this clause, the appellate authority may, after giving the party an opportunity of making his representation, pass such order thereon as that authority may deem fit.

2. Pending disposal of an appeal, the appellate authority may direct that the order appealed against shall not take effect until the appeal is disposed off.

16. In an ordinary course, this court would have remanded the matter to the first respondent to afford proper opportunity to the writ petitioner and dispose of the appeal in accordance with law. However, as can be seen from the nature of the order, it appears that the first respondent disposed of the matter keeping in view of the orders made by this court, may be in undue haste. It is needless to say that it is a case of suspension pending enquiry and the writ petitioner had taken a specific stand in the affidavit filed in support of the writ petition that no body had lifted the stocks as on today. In the

light of the facts and circumstances, let the writ petitioner to continue to supply essential commodities for a period of six weeks and in the meanwhile let the second respondent, Revenue Divisional Officer, Kurnool, complete the enquiry and pass appropriate orders on merits and in accordance with law.

17. With the above direction, the writ petition is disposed of at the stage of admission. No costs.

JUSTICE P . S . NARAYANA .

18/12/2007.

NB:

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1) Operative Portion of the Order by wire at party's costs.

2) CC of the Order tomorrow.

B/o. ISL

NB : LR COPY TO BE MARKED

B/O. ISL.